

04 CV 00510 (SR)

Revised 05/01 WDNY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORKFORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)1. CAPTION OF ACTION

A. **Full Name And Prisoner Number of Plaintiff:** NOTE: *If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.*

1. Todd M. Evchich "Pro Se"

2. _____

-VS-

B. **Full Name(s) of Defendant(s)** NOTE: *Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.*

1. Michael Sullivan4. Anthony Disarno2. Michael Delong5. Brian Britzzaloro3. Timothy Ring6. Thomas Feeney"See Attached for additional Defendant"2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: *To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: Todd M. Evchich ICN# 03130 E.C.H.CPresent Place of Confinement & Address: 40 Delaware Buffalo, N.Y. 14202

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: Michael Sullivan

(If applicable) Official Position of Defendant: City of Buffalo Police Officer

(If applicable) Defendant is Sued in ☒ Individual ^{Both} and/or ☒ Official Capacity

Address of Defendant: 74 Franklin Street Buffalo, NY 14202-4099

Name of Defendant: Michael DeLong

(If applicable) Official Position of Defendant: City of Buffalo Police Officer

(If applicable) Defendant is Sued in ☒ Individual ^{Both} and/or ☒ Official Capacity

Address of Defendant: 74 Franklin Street Buffalo, N.Y. 14202-4099

Name of Defendant: Timothy Ring

(If applicable) Official Position of Defendant: Lieutenant City of Buffalo Police

(If applicable) Defendant is Sued in ☒ Individual ^{Both} and/or ☒ Official Capacity

Address of Defendant: 74 Franklin Street Buffalo, N.Y. 14202-4099

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes _____ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

Caption of Action continued

17th Defendant

Name: Thomas Kurdziel

Defendant Information Note continued

Name of Defendant: Anthony Disarno

Official position of Defendant: Buffalo Municipal Housing Authority

Defendant is Sued in X Individual and X Official Capacity

Address of Defendant: Not Known

Name of Defendant: Brian Britzzalano

Official position of Defendant: Buffalo Municipal Housing Authority

Defendant is Sued in X Individual and X Official Capacity

Address of Defendant: Not Known

Name of Defendant: Thomas Feeney

Official position of Defendant: Buffalo Municipal Housing Authority

Defendant is SUEd in X Individual and X Official Capacity

Address of Defendant: Not Known

Name of Defendant: Thomas Kurdziel

Official Position of Defendant: Buffalo Municipal Housing Authority

Defendant is Sued in X Individual and X Official capacity

Address of Defendant: Not Known

2. Court (if federal court, name the district; if state court, name the county): _____
3. Docket or Index Number: _____
4. Name of Judge to whom case was assigned: _____
5. The approximate date the action was filed: _____
6. What was the disposition of the case? _____

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved: _____

Disposition (check the statements which apply):

_____ Dismissed (check the box which indicates why it was dismissed):

_____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

_____ By court for failure to exhaust administrative remedies;

_____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

_____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

_____ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes _____ No _____

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit: _____
 Plaintiff(s): _____
 Defendant(s): _____
2. District Court: _____
3. Docket Number: _____
4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

_____ Dismissed (check the box which indicates why it was dismissed):

- _____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- _____ By court for failure to exhaust administrative remedies;
- _____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- _____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

_____ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|-----------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • <u>Excessive Force</u> | • Denial of Medical Treatment |
| • Equal Protection | • <u>Failure to Protect</u> | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) March, 24, 2004,
defendant (give the name and position held of each defendant involved in this incident) Michael Sullivan a
City of Buffalo police officer, Michael Delong City of Buffalo
Police Officer

did the following to me (briefly state what each defendant named above did): Sometime in the afternoon on the corner
of Michigan and Sanson during the course of arrest, Complaintiff Todd M. Erchich was physically and
mentally Assaulted by defendants Michael Sullivan and Michael Delong with kicks to the face, head, ribs
then they repeatedly hit me with thier flashlights on the head, hands back, legs, and Michael Sullivan
threatend to bash my brains out. Complaintiff begged and pleaded for help during the course of
this incident while I was lay face to the ground and hands interlocked behind my head defenseless
The defendants would not stop the beating and I thought I was going to die until I heard a
ambulance arrive. At that time Michael Sullivan spit on me and said I was lucky the ambulance arrived.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: to remedy the deprivation "under color of state law," of
The rights guaranteed by the fourth amendment and any other amendments that may have been violated under the United States
Constitution.

The relief I am seeking for this claim is (briefly state the relief sought): \$300,000.00 in compensatory damages and \$100,000.00
punitive damages for pain and suffering and intentional infliction of emotional distress as this complaint
is still suffering. And medical bills, Attorney fees, property loss, and such additional relief the court may deem
just and proper.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☐ Yes ☐ No If yes, what was the result? _____

Did you appeal that decision? ☐ Yes ☐ No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: I have made 3 attempts by writing the Buffalo City Police Department for complaint forms and have recieved no reply. I also believe this incident is a "non grievable issue"! Complaint forms were recieved 7-2-04, Complaints Filed.

A. SECOND CLAIM: On (date of the incident) March 24, 2004
 defendant (give the name and position held of each defendant involved in this incident) Timothy Ring, Lieutenant Anthony Disarno, Police Officer of B.M.H.A, Brian Britzalaro, Police Officer of B.M.H.A, Thomas Feeney, Police Officer of B.M.H.A, Thomas Kurdziel, Police of B.M.H.A. (B.M.H.A - Buffalo Municipal Housing Authority)
 did the following to me (briefly state what each defendant named above did): In the afternoon on the corner of Michigan and

Ganson, during the course of arrest defendants named above did act with deliberate indifference, when they observed this complaintiff Todd M. Evchich getting brutally assaulted by Michael Sullivan and Michael DeLong with repeatedly strikes to the head and body with thier flashlights and kicks and threats. This complaintiff did yell and beg for help and Timothy Ring, Anthony Disarno, Brian Britzalaro, Thomas Feeney, Thomas Kurdziel did nothing to protect or intervene in anyway to stop this incident. Due to thier failure to protect or intervene, this complaintiff was hospitalized for 2 days in the trauma unit.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: to remedy the deprivation "under color of state law" of rights guaranteed by the fourteenth amendment and any other amendment that may have been violated Under The U.S.A. constitution.
 The relief I am seeking for this claim is (briefly state the relief sought): \$200,000.00 in compensatory damages and \$100,000.00 in punitive damages for pain and suffering and intentional infliction of emotional distress, as this complaintiff is still suffering. Medical bills, attorney fees, property loss. And any additional relief the court may deem just and proper.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes ☒ No If yes, what was the result? _____

Did you appeal that decision? Yes ☒ No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: I believe this is a non grievable issue! However I did File Complaints with the Buffalo Police Department,

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

WHEREFORE, Todd M. Evchich prays for judgement and damages in his favor in an amount sufficient to compensate him for pain and intentional infliction of emotional distress in which was inflicted by the defendants due to thier excessive force and failure to protect and intervene, in no event less than \$700,000, together with attorney fees medical bills loss property, damaged property and any additional relief the court may deem just and proper.

Do you want a jury trial? Yes ☒ No ☐

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7-12-04
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

Todd M Evchich
Signature(s) of Plaintiff(s)